

AUG 26 2005

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T.S. McGREGOR, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:

THE CATHOLIC BISHOP OF SPOKANE)  
a/k/a THE CATHOLIC DIOCESE OF )  
SPOKANE, a Washington )  
corporation sole,

Debtor.

)  
No. 04-08822-PCW11  
Chapter 11

\_\_\_\_\_  
COMMITTEE OF TORT LITIGANTS,

Plaintiff,

vs.

THE CATHOLIC DIOCESE OF  
SPOKANE, et al.,

Defendants.

)  
Adversary No. 05-80038-PCW

)  
MEMORANDUM DECISION RE:  
EVIDENTIARY OBJECTIONS

The Tort Litigants' Committee ("TLC"), as part of its pleadings in this constellation of motions for summary judgment, responses and motions to dismiss, filed the following pleadings:

1. Committee of Tort Litigants' Omnibus Evidentiary Objections to Affidavits Proffered by the Debtor in Opposition to the Committee's Motion for Summary Judgment and in Support of Debtor's Cross Motion for Summary Judgment (Docket No. 239); and
2. Committee of Tort Litigants' Omnibus Evidentiary Objections to Affidavits Proffered by the Parishes in Opposition to Committee's Motion for Partial Summary Judgment (Docket No. 240).

Attached to these objections were exhibits which, in great detail, set out the language objected to and the basis of the objection.

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1     The charts detailing the objections to the debtor's affidavits run  
2     to 40 pages.   The charts detailing the objections to the  
3     Association of Parishes' affidavits run to 233 pages.   The Court  
4     recognizes that the parishes filed many more affidavits than the  
5     debtor.   Both the debtor and the parishes were compelled to file  
6     extensive responses.

7         The Court decided at oral argument on the summary judgment  
8     motions that a lengthy hearing to consider each and every objection  
9     was not a good use of scarce assets.   The parties were told that  
10    they would be invited to submit additional materials regarding  
11    specific objections to be defined at a later date.   The Court did  
12    that by a law clerk's letter to counsel.   All of the affected  
13    counsel accepted the invitation to supply additional written  
14    argument.   The Court has considered the applicable parts of the  
15    original objections and responses as well as all of the  
16    supplemental materials filed at the Court's request.

17         The goal of these objections was clearly to eliminate  
18    opposing affidavits for technical rather than substantive reasons.  
19    Objections to affidavits in a summary judgment motion have their  
20    place.   On occasion, a party will file affidavits which in whole or  
21    in part should not be allowed to stand unchallenged for evidentiary  
22    reasons.   However, that is certainly not typical.   A judge is  
23    normally quite capable of determining what to consider and what to  
24    discount.   The fact that evidence is being allowed for the purpose  
25    of this motion does not mean that it would be automatically  
26    admitted in an evidentiary hearing.   Further, since the Court is  
27    dealing with a fraction of the objections, absolutely no  
28    conclusions should be drawn as to how the objections not addressed

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1 might have been handled.

2       In dealing with the objections, the Court is ruling on those  
3 specific objections upon which it asked for additional material and  
4 portions of the affidavits for which there were no detailed  
5 objections. As to entire affidavits that were not addressed, the  
6 Court makes no ruling. Likewise, with regard to affidavits that  
7 are addressed in this decision, to the extent that an objection to  
8 a paragraph or exhibit is not discussed, then the Court makes no  
9 ruling as to that material and the objection is neither granted nor  
10 denied. The Court's purpose is judicial economy. It is only  
11 ruling upon those objections which relate to statements upon which  
12 the Court relied in reaching its decision on the summary judgment  
13 and dismissal motions.

14       There is an objection based on relevance made in connection  
15 with every single affidavit. The Court has considered this  
16 objection as to each of the contested affidavits addressed below  
17 and concluded that it is without merit. The objection based upon  
18 relevance as to each of the following affidavits is denied.

19       Affidavit of William S. Skylstad, Exhibit B, Docket No. 210

20       The TLC, in its written submissions, withdraws its objection  
21 and this exhibit will be admitted for the purpose of summary  
22 judgment.

23       Affidavit of Eleanor Finley, Docket No. 129

24       The TLC objected to the entire affidavit on the basis of  
25 relevance and specifically to paragraphs 7-9. The Court invited  
26 additional submissions regarding paragraph 7. The specific  
27 objection to paragraph 7 is lack of foundation and vague and  
28 ambiguous as to the statement about regular contributions and lack

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1 of foundation and legal conclusion as to how the money was used.  
2 Finally, any documents upon which the affiant relied were not  
3 attached.

4 The objection is overruled as to paragraphs 1-7 and these  
5 paragraphs are admitted for the purpose of summary judgment.  
6 Paragraphs 8-9 have not been relied upon by the Court in making its  
7 ruling on the motions for summary judgment or to dismiss and the  
8 evidentiary objection to those paragraphs is not being ruled upon.  
9 The allowed portions deal with affiant's history at the parish and  
10 her intentions and motivations for giving. The statements do not  
11 involve a legal conclusion. In general, the testimony is relevant  
12 and the weight given to it will be dealt with in the memorandum  
13 opinion. For the purpose of summary judgment, there is sufficient  
14 foundation.

15                   Affidavit of Father Daniel Barnett, Docket 130

16                   The TLC objected to the entire affidavit on the basis of  
17 relevance and specifically to paragraphs 4-22 and Exhibits A-M.  
18 The Court invited additional submissions regarding paragraphs 6 and  
19 11. The specific objection to paragraph 6 is lack of foundation  
20 and legal conclusion as to the transfer of the property for \$135.00  
21 and the source of the money. Further, the objection states that  
22 the underlying documents have not been authenticated or established  
23 as business records.

24                   The objection is overruled as to Paragraphs 1-3, 6 and 11.  
25 There is sufficient foundation to admit as business records. As to  
26 paragraph 6, the Court has reviewed Exhibit C. It is apparent that  
27 \$135.00 was expended for the lot. There is no apparent income  
28 source other than parishioners and the moving party has not  
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1 disputed the contention made throughout this proceeding that the  
2 most significant source of funding for the debtor (and the other  
3 members of the diocesan family) is free will contributions by  
4 parishioners. Therefore, paragraph 6 and Exhibit C are admitted  
5 for the purpose of summary judgment.

6 As to paragraph 11, there is sufficient foundation for a  
7 parish priest to make these statements and authenticate Exhibit F.  
8 Paragraph 11 and Exhibit F are admitted for the purpose of summary  
9 judgment.

10 Paragraphs 4-5, 7-10, 12-22, Exhibits A-B, D-E and G-M have  
11 not been relied upon by the Court in making its ruling on the  
12 motions for summary judgment or to dismiss and the evidentiary  
13 objection to those paragraphs and exhibits is not being ruled upon.

14 Affidavit of Father Mike Kwiatkowski, Docket No. 174

15 The TLC objected to the entire affidavit on the basis of  
16 relevance and specifically to paragraphs 4-21 and Exhibits A-N.  
17 The Court invited additional submissions as to paragraph 6. The  
18 specific objection to paragraph 6 is lack of foundation and that  
19 affiant has not been qualified as an expert. The Association of  
20 Parishes responded that the affiant is not intended to be an  
21 expert, but, as a parish priest, is qualified to speak to the  
22 source of funds and reliance on the funds. The objection is  
23 overruled as to paragraphs 1-3 and 6. There is sufficient  
24 foundation for the statements made. Paragraphs 1-3 and 6 are  
25 admitted for the purpose of summary judgment.

26 Paragraphs 4-5, 7-21 and Exhibits A-N have not been relied  
27 upon by the Court in making its ruling on the motions for summary  
28 judgment or to dismiss and the evidentiary objection to those  
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1 paragraphs and exhibits is not being ruled upon.

2                   Affidavit of Frank Anselmo, Docket 143

3                   The TLC objected to the entire affidavit on the basis of  
4 relevance and specifically to paragraphs 3-6. The Court invited  
5 additional submissions as to paragraph 4. The specific objection  
6 as to paragraph 4 is lack of foundation and legal conclusion.  
7 There is sufficient foundation for the statements made. The  
8 statement does not involve a legal conclusion. The objection is  
9 overruled as to paragraphs 1-2 and 4. Paragraphs 1-2 and 4 are  
10 admitted for the purpose of summary judgment.

11                  Paragraphs 3 and 5-6 have not been relied upon by the Court in  
12 making its ruling on the motions for summary judgment or to dismiss  
13 and the evidentiary objection to those paragraphs is not being  
14 ruled upon.

15                  Affidavit of Father Paul Vevik, Docket 144

16                  The TLC objected to the entire affidavit on the basis of  
17 relevance and specifically paragraphs 4-18 and Exhibits A-G. The  
18 Court invited additional argument as to paragraphs 13 and 18. The  
19 specific objection to paragraph 13 is lack of foundation and legal  
20 conclusion. The statement that donations were for the exclusive  
21 use and benefit of the parish does not rise to the level of a legal  
22 conclusion. On the other hand, the statement that the donations  
23 were used in compliance with Washington law and canon law do  
24 constitute a legal conclusion. The portion of the sentence reading  
25 "In accordance with Canon Law and Washington Law" is struck and the  
26 balance is admitted. Exhibit F is admitted.

27                  The objection to paragraph 18 is lack of foundation and legal  
28 conclusion. The statements do not constitute legal conclusions and  
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1 there is sufficient foundation.

2 Paragraphs 1-3, 13, 18 and Exhibit F are admitted except as  
3 noted above for the purpose of summary judgment. Paragraphs 4-12,  
4 14-17, Exhibits A-E and G have not been relied upon by the Court in  
5 making its ruling on the motions for summary judgment or to dismiss  
6 and the evidentiary objection to those paragraphs and exhibits is  
7 not being ruled upon.

8                   Affidavit of Father John Krier, Docket 146

9                   The TLC objected to the entire affidavit on the basis of  
10 relevance and specifically to paragraphs 4-13 and Exhibits A-C.  
11 The Court invited additional argument as to paragraph 9. The  
12 specific objection to paragraph 9 is lack of foundation and  
13 personal knowledge. There is sufficient foundation to support the  
14 statement. Paragraphs 1-3 and 9 are admitted for the purpose of  
15 summary judgment.

16                  Paragraphs 4-8, 10-13 and Exhibits A-C have not been relied  
17 upon by the Court in making its ruling on the motions for summary  
18 judgment or to dismiss and the evidentiary objection to those  
19 paragraphs is not being ruled upon.

20                   Affidavit of David Tareski, Docket 147

21                  The TLC objects to the entire affidavit on the basis of  
22 relevance and specifically to paragraphs 5-11. The Court invited  
23 additional argument as to paragraph 11. The specific objection is  
24 hearsay and lack of foundation. The TLC appears to have retreated  
25 from the hearsay objection since they did not further explain the  
26 objection on this point. Further, the Court does not find hearsay  
27 to be present. There is sufficient foundation for the statements.  
28 Paragraphs 1-3 and 11 are admitted for the purpose of summary

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1 judgment.

2 Paragraphs 5-10 have not been relied upon by the Court in  
3 making its ruling on the motions for summary judgment or to dismiss  
4 and the evidentiary objection to those paragraphs is not being  
5 ruled upon.

6 **Affidavit of Father Stephen Barnufsky, Docket 139**

7 The TLC objects to the entire affidavit on the basis of  
8 relevance and specifically to paragraphs 4-7. The Court invited  
9 additional arguments as to paragraphs 5 and 6. The specific  
10 objection to paragraphs 5 and 6 was that it involved a lack of  
11 foundation regarding a statement that Father Barnufsky was a legal  
12 representative of the Franciscan Fathers. The Court concludes that  
13 the affidavit and exhibit establish foundation. There is a  
14 reference in the objection to a legal conclusion, but no further  
15 development is provided. The TLC argues that Father Barnufsky's  
16 testimony cannot establish intent and furthermore the subjective  
17 intent of the transferor is irrelevant. *See, Engel v. Breske*, 37  
18 Wn.App. 526, 681 P.2d 263 (1984); *Zioncheck v. Nadeau*, 196 Wn. 33,  
19 81 P.2d 811 (1938). Neither case is persuasive in this instance.  
20 Paragraphs 1-3, 5-6 and Exhibit A are admitted.

21 Paragraphs 4 and 7 have not been relied upon by the Court in  
22 making its ruling on the motions for summary judgment or to  
23 dismiss, and the evidentiary objection to those paragraphs is not  
24 being ruled upon.

25 **Affidavit of George Telfer, Docket 140**

26 The TLC objects to the entire affidavit on the basis of  
27 relevance and specifically to paragraphs 4-7 and Exhibit A. The  
28 Court invited additional arguments as to paragraph 7. The specific

1 objection as to paragraph 7 is that it states a legal conclusion.  
2 No legal conclusion is made. Paragraphs 1-3 and 7 are admitted for  
3 the purpose of summary judgment.

4 Paragraphs 4-6 and Exhibit A have not been relied upon by the  
5 Court in making its ruling on the motions for summary judgment or  
6 to dismiss and the evidentiary objection to those paragraphs is not  
7 being ruled upon.

8                   Affidavit of Father Michael Blackburn, Docket 141

9                   The TLC objects to the entire affidavit on the basis of  
10 relevance and specifically to paragraphs 4-17 and Exhibits A-F.  
11 The Court invited additional arguments as to paragraph 9. The  
12 specific objection is lack of foundation and personal knowledge.  
13 The Association of Parishes responds that the affiant is not  
14 intended to be an expert, but, as a parish priest, is qualified to  
15 speak to the source of funds and reliance on the funds. Paragraphs  
16 1-3 and 9 are admitted for the purpose of summary judgment.

17                  Paragraphs 4-8, 10-17 and Exhibits A-F have not been relied  
18 upon by the Court in making its ruling on the motions for summary  
19 judgment or to dismiss and the evidentiary objection to those  
20 paragraphs is not being ruled upon.

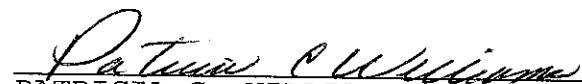
21                   CONCLUSION

22                  As previously noted, the Court is only ruling on specific  
23 paragraphs and exhibits in affidavits. To the extent that an  
24 affidavit is not mentioned at all or there is not a specific ruling  
25 as to a paragraph or exhibit, the objection is neither granted nor  
26 denied as the paragraph or exhibit has not been relied upon. The  
27 Court has attempted to identify each paragraph and exhibit and  
28 whether it is being ruled upon or not. In the event the Court

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1 failed to mention an affidavit, paragraph or exhibit the foregoing  
2 general rule should be applied.

3 DATED this 26<sup>th</sup> day of August, 2005.

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6 PATRICIA C. WILLIAMS  
7 Bankruptcy Judge

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